



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2017-0174; FRL-9966-29-Region 4]

Air Plan Approval: Alabama; Transportation Conformity

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a portion of a revision to the Alabama State Implementation plan (SIP) submitted by the State of Alabama on May 8, 2013, for the purpose of amending the transportation conformity rules to be consistent with Federal requirements.

DATES: This direct final rule is effective [Insert date 60 days after publication in the Federal Register] without further notice, unless EPA receives adverse comment by [Insert date 30 days after publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the Federal Register and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2017-0174 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment

and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Kelly Sheckler, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9222. Ms. Sheckler can also be reached via electronic mail at sheckler.kelly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

A. *Call to States for Conformity SIP Revisions*

In the Clean Air Act (CAA or Act), Congress recognized that actions taken by federal agencies could affect a State, Tribal, or local agency's ability to attain and maintain the national ambient air quality standards (NAAQS). Congress added section 176(c) (42 U.S.C. 7506) to the CAA to ensure federal agencies' proposed actions conform to the applicable SIP, Tribal Implementation Plan (TIP) or Federal Implementation Plan (FIP) for attaining and maintaining the NAAQS. That section requires federal entities to find that the emissions from the federal action will conform with the purposes of the SIP, TIP or FIP or not otherwise interfere with the State's or Tribe's ability to attain and maintain the NAAQS.

The CAA Amendments of 1990 clarified and strengthened the provisions in section 176(c). Because certain provisions of section 176(c) apply only to highway and mass transit

funding and approvals actions, EPA published two sets of regulations to implement section 176(c). The Transportation Conformity Regulations, (40 CFR part 51, subpart T, and 40 CFR part 93, subpart A) first published on November 24, 1993 (58 FR 62188), address federal actions related to highway and mass transit funding and approval actions. The conformity regulations have been revised numerous times since then.

When promulgated in 1993, the Federal Transportation Conformity Rule at 40 CFR 51.395 mandated that the transportation conformity SIP revisions incorporate several provisions of the rule in verbatim form, except insofar as needed to give effect to a stated intent in the revision to establish criteria and procedures more stringent than the requirements stated in these sections.

B. *What is transportation conformity?*

Transportation conformity is required under section 176(c) of the CAA to ensure that federally-supported highway projects, transit projects, and other activities are consistent with (“conform to”) the purpose of the SIP. Transportation conformity currently applies to areas that are designated nonattainment, as well as those areas redesignated to attainment after 1990 (maintenance areas), with plans developed under section 175A of the Act for the following transportation related pollutants: ozone, particulate matter (PM_{2.5} and PM₁₀), carbon monoxide, and nitrogen dioxide. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant NAAQS. The transportation conformity regulation is found in 40 CFR part 93, subpart A and provisions related to conformity SIPs are found in 40 CFR 51.390.

C. Transportation Conformity Provisions Affected by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)

On August 10, 2005, the SAFETEA–LU was signed into law and provided changes to the CAA that streamlined the requirements for conformity SIPs at section 176(c). Prior to SAFETEA–LU, states were required to address all of the Federal conformity rule’s provisions in their conformity SIPs. After SAFETEA–LU amended CAA section 176(c)(4)(E) and EPA revised 40 CFR 51.390 to be consistent with those amendments, states are required to address and tailor only three sections of the conformity rule in their transportation conformity SIPs. (The requirement that states adopt the Federal conformity rule verbatim results in the need for states to submit a SIP revision within one year of EPA’s adoption of any changes, including minor changes, to the rule.) The three sections of the federal rule which must meet a state’s individual circumstances are: 40 CFR 93.105, which addresses consultation procedures; 40 CFR 93.122(a)(4)(ii), which requires that written commitments be obtained for control measures that are not included in a Metropolitan Planning Organization’s transportation plan and transportation improvement program prior to a conformity determination, and that such commitments be fulfilled; and, 40 CFR 93.125(c) which requires that written commitments be obtained for mitigation measures prior to a project level conformity determination, and that project sponsors must comply with such commitments. In general, states are no longer required to submit conformity SIP revisions that address the other sections of the conformity rule, and they are able to streamline their SIP-approved conformity requirements consistent with changes made through SAFETEA–LU.

D. Prior Approval of Alabama Conformity SIP Revisions

EPA has approved several revisions to the Alabama SIP to incorporate transportation conformity requirements consistent with the Federal regulations. Initially, on May 11, 2000, EPA approved Alabama's SIP revision to address consultation requirements for transportation conformity. *See* 65 FR 30358. On March 26, 2009, EPA approved revisions to the transportation conformity requirements in the Alabama SIP to cover the specific applicable areas and address new requirements related to both the 8-hour ozone and PM_{2.5} NAAQS. *See* FR 74 13118. EPA also approved a subsequent revision to Alabama's transportation conformity requirements on September 26, 2012. *See* 77 FR 59100.

II. Analysis of State's Submittal

On May 8, 2013, the Alabama Department of Environmental Management submitted a SIP revision to EPA to make two changes to its transportation conformity requirements. First, the State changed its regulations at Alabama Administrative Code section 335-3-17-.01, *Transportation Conformity*, to reflect the January 24, 2008 (73 FR 4420) amendments to 40 CFR part 93, subpart A that address the 2005 SAFETEA-LU. That change in Alabama's regulation streamlines the State's transportation conformity SIP to include only §§93.105, 93.122(a)(4)(ii) and 93.125(c), consistent with Federal requirements, and not the provisions of 40 CFR 93 in entirety.

On March 14, 2012, EPA finalized the rule entitled "Transportation Conformity Rule Restructuring Amendments." *See* 77 FR 14979. Through that final action, EPA restructured several sections of the transportation conformity rule so that they apply to any new or revised NAAQS. Specifically, EPA amended §§93.101, 93.105, 93.109, 93.116, 93.118, 93.119, and

93.121 of the Transportation Conformity Rule. In its May 8, 2013, SIP revision, Alabama requests that EPA incorporate by reference subsequent Federal changes EPA promulgated in the Transportation Conformity Rule Restructuring Amendments. Although Alabama's submission mentions that it is incorporating by reference provisions in EPA's Transportation Conformity Rule Restructuring Amendments, the only relevant portion for incorporation by reference is the change that EPA made to section 93.105 because, in this same submission, Alabama changed the State regulations and transportation conformity requirements in its SIP to address only §§93.105, 93.122(a)(4)(ii) and 93.125(c), in accordance with EPA's regulations. The changes EPA made to §93.105 were administrative in nature and involved updates to citations, revision of introductory paragraphs, and redesignating paragraphs.

EPA has reviewed Alabama's submittal to ensure consistency with the current CAA, as amended by SAFETEA-LU, and EPA regulations governing state procedures for transportation and general conformity (40 CFR part 93, subparts A and B). The May 8, 2013, SIP revision, upon final approval by EPA, removes specific provisions of Alabama Administrative Code section 335-3-17-.01, "*Transportation Conformity*," from the SIP that are no longer required in light of the SAFETEA-LU amendments. With the removal of these specific provisions of 335-3-17-.01 from the SIP, the federal rules in 40 CFR part 93, subpart A will directly govern transportation conformity of federal actions in the State of Alabama. This revision complies with the requirements of CAA section 176(c)(4)(e) and 40 CFR 51.390(b). 40 CFR part 93, subpart A continues to subject certain Federal actions to transportation conformity requirements without the need for identical state rules and SIPs. Therefore, repealing the State rule will not impact continuity of the transportation conformity program in Alabama.

III. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the ADEM. Regulation chapter 335-3-17.01 entitled “Transportation Conformity,” effective May 28, 2013, which incorporates by reference the Federal Transportation Conformity Rule that was restructured and amended on March 14, 2012 (77 FR 14979). EPA has made, and will continue to make, these materials generally available through www.regulations.gov and/or at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

IV. Final Action

Pursuant to section 110 of the CAA, EPA is approving the revision to the Alabama SIP regarding the State’s transportation conformity requirements. The approval of Alabama’s conformity SIP revisions will align the Alabama SIP with the current federal conformity requirements, as amended by SAFETEA–LU, and the most recent EPA regulations governing state procedures for transportation conformity.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this Federal Register publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective **[Insert date 60 days from the date of publication in the Federal Register]** without further notice unless the Agency receives adverse comments by **[Insert date 30 days from date of publication in the Federal Register]**.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on **[Insert date 60 days from date of publication in the Federal Register]** and no further action will be taken on the proposed rule.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the

rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 4, 2017.

V. Anne Heard,
Acting Regional Administrator,
Region 4.

40 CFR part 52 is amended as follows:

PART 52- APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B – Alabama

2. Section 52.50(c) is amended by revising the entry for “Section 335-3-17-.01” to read as follows:

§ 52.50 Identification of plan.

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(c) * * *

EPA Approved Alabama Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
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Chapter No. 335-3-17 Conformity of Federal Actions to State Implementation Plans				
Section 335-3-17-.01	Transportation Conformity	5/28/2013	[Insert date of publication in <u>Federal Register</u> [Insert citation of publication]	
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[FR Doc. 2017-17241 Filed: 8/16/2017 8:45 am; Publication Date: 8/17/2017]